

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.) was delivered by

MACMAHON, J.—Defendant was on 12th April, 1904, appointed a constable for the county of Hastings for the period of 30 days, by the police magistrate for the city of Belleville, before whom he on the same day took the oath of office, which was filed with the clerk of the peace for the county of Hastings, and a notification of the appointment was also on the same day mailed by the magistrate to the Lieutenant-Governor.

When defendant applied to be appointed a constable he said his object was to prosecute those accused of violations of the Liquor License Act. . . .

On 14th April defendant went to plaintiff's private residence . . . and, according to plaintiff's evidence, stated that Mr. Faulkner, the license inspector, had appointed him to make searches, and he was there to search for persons violating the law, and that he intended searching the cellar under plaintiff's house for liquor which he supposed was stored there for the purpose of sale. He also told plaintiff he was a constable for the county, and any one preventing him making the search was liable to a fine of \$100. Plaintiff procured a lantern which he gave to defendant, but stated that when doing so he told him he had no right to search the premises. Defendant made a thorough search of the cellar, but found no liquor therein; and plaintiff said he never sold liquor or kept any for sale. . . .

[Reference to sec. 130 (1) of the Liquor License Act, R. S. O. 1897 ch. 245; Rex v. Cretelli, 3 O. W. R. 176.]

Defendant had known plaintiff for many years, and said he knew it was against the law to search a private house, and had he known it was plaintiff's house, he would not have searched it without a warrant, and that he never had any reason to apply for a warrant. . . .

There was no evidence whatever that the premises occupied by plaintiff was a house of public entertainment, or that liquor had at any time been sold or kept upon the premises.

The trial Judge directed a nonsuit to be entered because defendant was a constable acting in the discharge of his duty in making the search, and, there being no evidence of malice, he came within the protection of R. S. O. 1897 ch. 88, sec. 1 (1), and was entitled to a notice of action, without which plaintiff could not succeed.